

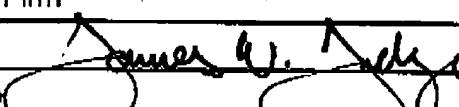
PTO/SB/21 (09-04)

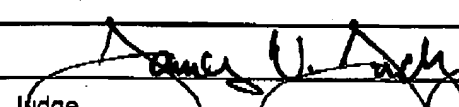
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/682,627	RECEIVED CENTRAL FAX CENTER JAN 24 2005
	Filing Date	October 1, 2001	
	First Named Inventor	Masakazu Karita	
	Art Unit	3736	
	Examiner Name	Brian Scott Szmal	
Total Number of Pages in This Submission	7	Attorney Docket Number	31.001-AG

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Issue Fee Payment Forms
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Judge Patent Firm		
Signature			
Printed name	James W. Judge		
Date	January 24, 2005	Reg. No.	42,701

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	James W. Judge	Date	January 24, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

JAN 24 2005

2005年 1月24日(月) 15:11

P.02/07

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.	:	09/682,627	Confirmation No. 2280
Applicant	:	Masakazu Karita	
Filed	:	October 1, 2001	
Tech. Cntr./Art Unit	:	3736	
Examiner	:	Brian Scott Szmal	
Docket No.	:	31.001-AG	
Customer No.	:	29453	

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION under C.F.R. § 1.181(a) to Withdraw Holding of Abandonment

Sir:

In response to the Notice of Abandonment of November 22, 2004, Applicant respectfully requests, based on evidence that a reply was timely filed, withdrawal of the holding that the present application is abandoned.

The checkbox next to item 1.(d), "No reply has been received," on the Notice of Abandonment is marked, and the blank next to item 1. is filled in with a date, which seems to allege that Applicant did not reply to "the Office letter mailed on 07 September 2004." Nevertheless, as will now be explained, the Office letter—an Advisory Action—of September 7, 2004 was mailed too late to apprise the Applicant of what he could do to move the prosecution of the present application forward.

Applicant's reply to the Office action of January 21, 2004 was filed, together with a petition for a two-month extension of time, on June 21, 2004, and was therefore timely. As *prima facie* evidence that the reply was timely filed, attached is the first page of Applicant's reply and a one-page Petition for Extension of Time. The Certificate of Mailing or Transmission under 37 C.F.R. § 1.8, appearing on each of the two documents, in the first place serves as *prima facie* evidence that the reply was timely filed on June 21, 2004.

But Applicant need not rely on this evidence exclusively. Both documents have been printed out from the Image File Wrapper, accessed through private PAIR, by the Applicant's undersigned representative. The Image File Wrapper copy of the

App. No. 09/682,627

Abandonment holding withdrawal request dated January 22, 2005

Reply to Notice of November 22, 2004

first page of Applicant's reply is stamped in the upper-right corner with an indication that the reply was received at the Central Fax Center on June 21, 2004. And both documents near the bottom are printed with the text "RCVD AT 6/21/2004 11:38:13 PM [Eastern Daylight Time]."

One further *prima facie* item of evidence readily available in support of Applicant's assertion that his reply to the Office action of January 21, 2004 was timely filed is in the File History on PAIR for this case. The ninth most recent item listed in the File History is "Workflow incoming amendment IFW," and is dated "06-21-2004." The next item chronologically following Applicant's reply—that is, the next item following the formal entry of the reply, "Amendment after Final Rejection," and the granting of the request for extension of time, both dated 06-22-2004—is "Date forwarded to Examiner," and is dated "08-05-2004."

It is respectfully pointed out that **one** month remained before the lapse of the six-month statutory period for replying to the final Office action. MPEP section 714.05, entitled, "Examiner Should Immediately Inspect," states,

Actions by applicant, especially those filed near the end of the period for reply, should be inspected immediately upon filing to determine whether they are completely responsive to the preceding Office action so as to prevent abandonment of the application. If found inadequate, and sufficient time remains, applicant should be notified of the deficiencies and warned to complete the reply within the period.

Yet in response to Applicant's reply of June 21, 2004, an Advisory action was mailed on September 7, 2004—**nearly seven weeks after** the six-month statutory deadline for replying to the final Office action. The timing of this response does not indicate that Applicant's reply of June 21, 2004 was "inspected immediately upon filing to determine whether [it was] completely responsive to the preceding Office action so as to prevent abandonment of the application."

On July 21, 2004, concerned that the six-month statutory period was at its end, Applicant's representative attempted to contact the Examiner in the present application, but was told that he was on vacation, and that filing an appeal or RCE was advisable. Unfortunately, due to the time difference between the U.S. and Japan, where Applicant resides, neither of those suggested options was feasible. MPEP section 714.18, "Entry of Amendments," states:

Every mail delivery should be carefully screened to remove all amendments replying to a final action in which a time period is running against the applicant. Such amendments should be processed within the next 24 hours.

App. No. 09/682,627

Abandonment holding withdrawal request dated January 2⁴, 2005

Reply to Notice of November 22, 2004

The purpose of this procedure is to ensure uniform and prompt treatment by the examiners of all applications where the applicant is awaiting a reply to a proposed amendment after final action. By having all of these applications pass over the supervisory patent examiner's desk, . . . *the supervisory patent examiner will know whether or not the examiner in each application is on extended leave or otherwise incapable of moving the application within the required time periods In cases of this type, the applicant should receive an Office communication in sufficient time to adequately consider his or her next action if the application is not allowed.*

(Emphasis added.)

In sum, it is respectfully submitted that one month constitutes sufficient time to notify an applicant that a reply is inadequate. Nevertheless, the Advisory action indicating that Applicant's reply of June 21, 2004 was found to be inadequate was not mailed until eleven weeks—nearly three months—had elapsed since Applicant's reply was faxed to the art unit to which this application is assigned.

Lastly, it is respectfully asserted that the present petition is timely, because it is being sent within two months from the November 22, 2004 mailing date of the Notice of Abandonment.

Accordingly, withdrawal of the Examiner's holding of abandonment is earnestly requested.

Respectfully submitted,

January 2⁴, 2005

James W. Judge
Registration No. 42,701

JUDGE PATENT FIRM

Rivière Shukugawa 3rd Fl.
3-1 Wakamatsu-cho
Nishinomiya-shi, Hyogo 662-0035
JAPAN

Telephone: 305-938-7119
Voicemail/Fax: 703-997-4565

Attachments